

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D24843  
C/kmg

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - October 9, 2009

FRED T. SANTUCCI, J.P.  
CHERYL E. CHAMBERS  
L. PRISCILLA HALL  
SHERI S. ROMAN, JJ.

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2009-04605

DECISION & ORDER

Rosemarie Brancaccio, respondent,  
v Kohl's Department Stores, Inc., appellant.

(Index No. 1233/08)

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Steven F. Goldstein, LLP, Carle Place, N.Y. (Christopher R. Invidiata of counsel), for appellant.

Zalman & Schnurman, New York, N.Y. (Norman E. Frowley of counsel), for respondent.

In an action to recover damages for personal injuries, the defendant appeals from an order of the Supreme Court, Westchester County (Loehr, J.), entered May 5, 2009, which denied its motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

The defendant failed to establish its entitlement to judgment as a matter of law on the issues of whether there was a defect in the speed bump over which the plaintiff tripped and fell, and, if so, whether the alleged defect was trivial and therefore not actionable (*see Berry v Rocking Horse Ranch Corp.*, 56 AD3d 711; *Cuebas v Buffalo Motor Lodge/Best Value Inn*, 55 AD3d 1361; *Boxer v Metropolitan Transp. Auth.*, 52 AD3d 447).

November 4, 2009

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The defendant's remaining contentions are without merit or need not be addressed in light of our determination.

SANTUCCI, J.P., CHAMBERS, HALL and ROMAN, JJ., concur.

ENTER:

  
James Edward Pelzer  
Clerk of the Court